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ECONOMY,
RESPECTING OUR
ENVIRONMENT

**Interim Report of the Standing Senate Committee
on Transport and Communications**

The Honourable Dennis Dawson, Chair

The Honourable Michael L. MacDonald, Deputy Chair

December 2016

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MEMBERS



The Honourable Senator Dennis Dawson, Chair



The Honourable Senator Michael MacDonald, Deputy Chair



The Honourable Senator Doug Black



The Honourable Senator Pierre-Hugues Boisvenu



The Honourable Senator Norman E. Doyle



The Honourable Senator Art Eggleton, P.C.



The Honourable Senator Stephen Greene



The Honourable Senator Elaine McCoy



The Honourable Senator Terry Mercer



The Honourable Senator Donald Plett



The Honourable Senator Bob Runciman



The Honourable Senator Betty Unger

Ex officio members of the committee:

The Honourable Senators Claude Carignan, P.C. (or Yonah Martin) and Peter Harder, P.C. (or Diane Bellemare)

Other Senators who have participated from time to time in this study:

The Honourable Senators Andreychuk, Manning, Mitchell, Mockler, Neufeld, Ngo, Poirier, Pratte, Tannas and Smith

Staff Members:

Daniel Charbonneau, Barbara Reynolds and Victor Senna, Clerks of the Committee

Jed Chong and Nicole Sweeney, Analysts, Parliamentary Information and Research Service, Library of Parliament

Extract from the *Journals of the Senate*, Wednesday, March 9, 2016:

The Honourable Senator Dawson moved, seconded by the Honourable Senator Moore:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report on the development of a strategy to facilitate the transport of crude oil to eastern Canadian refineries and to ports on the East and West coasts of Canada;

That the committee also examine how to share the risks and benefits as broadly as possible throughout the country; and

That the committee report to the Senate no later than June 30, 2016, and that it retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

After debate,

The question being put on the motion, it was adopted.

Charles Robert

Clerk of the Senate

Extract from the *Journals of the Senate*, Monday, June 20, 2016:

The Honourable Senator MacDonald moved, seconded by the Honourable Senator Martin:

That, notwithstanding the order of the Senate adopted on Wednesday, March 9, 2016, the date for the final report of the Standing Senate Committee on Transport and Communications in relation to its study on the development of a strategy to facilitate the transport of crude oil to eastern Canadian refineries and to ports on the East and West coasts of Canada be extended from June 30, 2016 to November 17, 2016.

After debate,

The question being put on the motion, it was adopted.

Charles Robert

Clerk of the Senate

Extract from the *Journals of the Senate*, Tuesday, November 1, 2016:

The Honourable Senator MacDonald moved, seconded by the Honourable Senator Mockler:

That, notwithstanding the order of the Senate adopted on Monday, June 20, 2016, the date for the final report of the Standing Senate Committee on Transport and Communications in relation to its study on the development of a strategy to facilitate the transport of crude oil to eastern Canadian refineries and to ports on the East and West coasts of Canada be extended from November 17, 2016 to March 31, 2017.

After debate,

The question being put on the motion, it was adopted.

Charles Robert

Clerk of the Senate

“The world as we have created it is a process of our thinking.
It cannot be changed without changing our thinking.”
— Albert Einstein

Petroleum pipelines, like highways, railways and power line corridors, are long established in Canada. They are instrumental to the quality of life and the standard of living we enjoy in Canada today. Pipelines have no equal when it comes to the safe, reliable and cost-efficient movement of petroleum over long distances. They are critically important to the creation of wealth in Canada and their use and development are in the public interest and the greater good of all Canadians.

In early 2016 the Standing Senate Committee on Transport and Communications decided to undertake a study on the development of a strategy to facilitate the transport of crude oil to eastern Canadian refineries and to ports on the east and west coasts. Since the start of our hearings in April, the committee has heard from 110 witnesses representing a wide cross section of stakeholders including industry and business leaders, First Nations, government officials, academics and environmental groups. In addition, the committee travelled to both the east and west coasts holding public hearings and undertaking fact-finding visits to refineries and ports.

On behalf of the committee members, we would like to express our thanks and appreciation to the committee’s staff for their work. In particular we would like to thank Jed Chong and Nicole Sweeney, analysts from the Library of Parliament, Daniel Charbonneau, Barbara Reynolds and Victor Senna, committee clerks, and Lyne Héroux and Lori Meldrum, administrative assistants.

Given the critical role of pipelines to Canada’s economic well-being, we are making seven recommendations to the Government. We believe that these recommendations will help form a strategy to improve public confidence and break the paralysis preventing the construction of pipelines in Canada.

The Honourable Dennis Dawson
Chair

The Honourable Michael L. MacDonald
Deputy Chair

REPORT HIGHLIGHTS

Canada has the world's third-largest proven oil reserves, but insufficient energy infrastructure has left the country dependent on foreign oil producers and limited to selling domestic product at a steep discount to a glutted American market.

A dated and insufficiently inclusive approvals process has thwarted attempts to ensure Canadians across the country benefit from the economic potential of the Western oil patch.

Canada is consequently foregoing billions of dollars in revenue and tens of thousands of jobs while importing oil from foreign countries, some with dubious human rights and environmental records.

A strategy to facilitate the transport of crude oil to Canada's east and west coasts is clearly an economic imperative.

The Senate Committee on Transport and Communications has spent months speaking with experts in Ottawa and undertaking fact-finding missions across Canada to formulate a strategy that is effective, democratic, and economically and environmentally responsible.

The Committee believes expanding Canada's pipeline infrastructure is the optimal approach. For this to take place, a more inclusive, fact-based and apolitical regulatory regime must be put in place.

Environmental concerns should play a more significant role. Advocates for the environment must be welcomed into the approvals process so that regulators can make wise decisions about where and how Canada's pipeline infrastructure should grow.

Indigenous communities must also be more closely involved. The federal government already has a constitutional duty to consult Indigenous peoples in matters like these but this duty is discharged independently of the regulatory process.

There is much to gain from a more inclusive and fact-based approach.

The Committee has heard that **pipeline operations added \$11.5 billion to Canada's gross domestic product (GDP) in 2015 alone, in addition to sustaining 34,000 full-time jobs and generating \$2.9 billion in labour income.**

Officials from Natural Resources Canada have estimated the Trans Mountain Expansion and the proposed Energy East Pipeline Project would generate almost **\$78 billion in additional GDP**. Other witnesses said failure to build pipelines would have no impact on global oil demand and would reduce the royalty revenues used by governments to deliver essential public services.

Establishing a clear and fair process for the necessary expansion of Canada's energy infrastructure will help the country realize these opportunities.

KEY RECOMMENDATIONS

Modernizing the National Energy Board (NEB) is an important first step toward increasing public confidence in the regulatory process.

While the Board's current mandate is simply to assess whether or not a specific project is in the public interest, based on technical aspects of the project, the Committee believes there is some room to broaden the Board's mandate to include environmental matters within the scope of pipeline construction and to improve communication and consultation with people and groups most likely to be affected.

Moreover, the fact that Board decisions are subject to final approval from the Governor in Council (the Governor General, acting on the advice of Cabinet) erodes the Board's authority and virtually ensures the approvals process is highly politicized.

The Committee recommends Natural Resources Canada modernize the National Energy Board by methods that include:

- **Broadening the Board's mandate to ensure effective communication and consultation with stakeholders, and**
- **Removing the Governor in Council's automatic final approval (Board decisions would instead be subject to appeal to the Governor in Council).**

To improve relations with Indigenous peoples and enhance their involvement in the process **the Committee also recommends integrating information gathered during the Crown's duty to consult Indigenous peoples into the Board's process, and that the Governor in Council use its authority to appoint permanently an Indigenous peoples' representative to the Board.**

During its study, the Committee heard testimony about specific pipeline proposals like TransCanada's Energy East Pipeline Project, which would bring western crude oil to refineries in Eastern Canada.

In light of the potential economic, environmental and logistical attributes, **the Committee recommends that the National Energy Board, as part of its hearings on the proposed Energy East project, examine the Strait of Canso area in Nova Scotia as an alternative end point.**

In the event of an oil spill, authorities must be well prepared to reclaim the environment. Despite a world-class marine safety regime, the Committee believes more could be done to increase the Canadian Coast Guard's capacity to deal with oil spills.

The Committee recommends that Fisheries and Oceans Canada ensure that the Oceans Protection Plan includes enhancements to the Canadian Coast Guard, including an expansion of resources and bases of operations for the purpose of tanker spill mitigation and prevention.

NEXT STEPS

Pipeline paralysis is no longer an option. The federal government has an obligation to make use of the country's abundant resources so that all Canadians can benefit.

The Committee's report shows how the government can restore legitimacy to the pipeline approval process. Senators will continue to advocate for an energy strategy that is more inclusive, fact-based and effective.

RECOMMENDATIONS

Recommendation 1

The Committee recommends that Natural Resources Canada, in collaboration with Indigenous peoples, industry and academia, develop and update annually a working document of best practices in building partnerships with Indigenous communities in the natural resources sector.

Recommendation 2

The Committee recommends that the Governor in Council use its authority to make appointments under the National Energy Board Act to appoint permanently an Indigenous peoples' representative to the National Energy Board. The representative should be chosen in consultation with Indigenous communities.

Recommendation 3

The Committee recommends that Natural Resources Canada modernize the National Energy Board (NEB) regulatory process by:

- removing the Governor in Council's (i.e. Cabinet's) automatic final approval of pipeline projects, thus empowering the NEB to act in Canada's national interests on pipeline decisions. These NEB decisions would be subject to appeal to the Governor in Council, similar to some licensing decisions by the Canadian Radio-television and Telecommunications Commission;**
- ensuring that Canadians have multiple ways of participating in the NEB process, including, for example, online participation;**
- broadening the NEB's mandate to include greenhouse gas emissions and other environmental matters that are within the scope of pipeline construction;**
- broadening the NEB's mandate to ensure effective communication and consultation with stakeholders; and**
- having the federal government conduct its consultation with First Nations at the same time as the NEB's review of a pipeline project, and feeding the results of that consultation into the NEB process before the Board's final decision on a project.**

Recommendation 4

The Committee recommends that the National Energy Board, as part of its hearings on the proposed Energy East project, examine the Strait of Canso area as an alternative end point of the pipeline.

Recommendation 5

The Committee recommends that Natural Resources Canada focus on improving public knowledge about regulatory processes, the economic importance of the oil and gas sector, and its impact on Indigenous peoples and the environment.

Recommendation 6

The Committee recommends that Fisheries and Oceans Canada ensure that the Oceans Protection Plan includes enhancements to the Canadian Coast Guard, including an expansion of resources and bases of operations for the purposes of oil tanker spill mitigation and prevention.

Recommendation 7

The Committee recommends that the Government of Canada continue its research into the behaviour of various types of oil in water and how aquatic ecosystems can be better reclaimed after an oil spill, as outlined in the Oceans Protection Plan.

INTRODUCTION

In spite of Canada being home to the world's third-largest proven oil reserves, under-developed pipeline infrastructure means that eastern refineries rely on foreign oil and 97% of crude oil exports in 2014 went to one destination: the United States. Canada's main customer has also become increasingly self-sufficient in oil production.

While rail and pipelines both deliver oil safely to its destination 99.99% of the time, pipelines are considered the safest and most economical way of transporting crude oil. Yet, in recent years a nationally divisive debate about whether or not this natural resource should even be developed has created a paralysis in decision-making about pipelines in Canada.

This essential, **nation-building** infrastructure is under developed not for a lack of a regulatory licence, but because of a lack of consensus as to whether or not these pipelines are in the public interest, due to concerns about environmental issues and the engagement of Indigenous peoples. As a result, Canadian oil is selling at a discount, meaning that Canada is not receiving the full value of this resource. Furthermore, regulatory uncertainty around pipelines has eroded investor confidence.

Given the critical role of pipelines to Canada's economic well-being, the Standing Senate Committee on Transport and Communications ("the Committee") decided to undertake a study on the development of a strategy to facilitate the transport of crude oil to eastern Canadian refineries and to ports on the east and west coasts of Canada.

Part 1 of the report emphasizes the importance of pipelines and the oil and gas industry to Canada. Part 2 of the report focuses on social licence, the public interest and investor confidence in regulatory processes. Part 3 of the report presents recommendations on a crude oil transport strategy. While the Committee heard witnesses from the rail sector, the study focuses on the transport of crude oil by pipeline and tanker.

PART 1: IMPORTANCE OF PIPELINES AND THE OIL AND GAS INDUSTRY TO CANADA

The Committee heard from some pipeline opponents who discussed their concerns about the safety of pipelines and their environmental impact. Nevertheless, the Committee believes that the benefits of pipelines and the oil and gas industry outweigh these risks.

For example, Chris Bloomer, President and Chief Executive Officer of the Canadian Energy Pipeline Association told the Committee that, in 2015, pipeline operations added \$11.5 billion to Canada's gross domestic product (GDP), sustained 34,000 full-time jobs and generated \$2.9 billion in labour income. Over the next 30 years, Mr. Bloomer suggests that pipeline operations will contribute \$175 billion to Canada's GDP.

New pipelines would help improve existing markets and develop new ones for Canada's crude oil. According to a representative from the Quebec Employers Council, a lack of new pipelines costs the Canadian economy billions of dollars annually.

Pipeline proposals that are currently under consideration, according to many witnesses, would provide tens of thousands of jobs and tens of billions of dollars in private investment to the Canadian economy. According to officials from Natural Resources Canada (NRCan), **the Trans Mountain Expansion project and the proposed Energy East project would generate \$77.6 billion in additional GDP for the Canadian economy.**

The benefits of these proposals would be shared across Canada. For example, David MacLean, Vice-President of Communications and Policy at the Alberta Enterprise Group, told the Committee that with respect to the proposed Energy East pipeline, Ontario would see the largest share of employment benefits, followed by Quebec, New Brunswick and Alberta. Mr. MacLean also noted that British Columbia would receive 24% of the employment benefits and 12% of the fiscal benefits from the proposed expansion of the Trans Mountain pipeline.

In terms of existing activity in this industry, witnesses noted that the Alberta oil and gas sector sources some of its goods, services and labour from other parts of the country, including eastern Canada. Witnesses also mentioned that tax revenues from the oil and gas sector in Alberta form part of the province's contribution to the federal Equalization Program.

In addition to its energy uses, oil is used to produce many products such as plastics and clothing. Witnesses told the Committee that the International Energy Agency expects global oil demand to increase through to 2040. Failure to build pipelines in Canada would not have an impact on this global demand.

A pipeline to eastern Canada would, according to many witnesses, improve energy security by reducing the dependence of Canadian refineries on imports, some of which come from countries

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with poor environmental and human rights records. A witness from the Saint John Region Chamber of Commerce noted that Canada imports **\$26 billion of oil per year**.

The Canadian oil industry has been hit hard by the recent drop in oil prices. For example, Alex Ferguson, Vice President of Policy and Performance at the Canadian Association of Petroleum Producers told the Committee about record-setting drops in capital investment and employment in the oil and gas sector. According to Yvan Grenier, Director General of the Association des propriétaires de machinerie lourde du Québec, there has also been a decline in the construction sector as a result of the downturn in the oil and gas sector.

Many witnesses noted that not building pipelines would be a missed economic opportunity with an impact on Canada's current and future economic development: job growth would stall and governments would have less revenue to deliver public services. The missed economic opportunity would have an impact on future generations, as noted by witnesses from the Young Pipeliners Association of Canada.

A lack of new pipelines may also increase reliance on rail, even though pipelines are considered the safer, more economical and more environmentally friendly way of transporting crude oil. The potential to reduce the use of rail to transport crude oil, particularly in light of the tragedy in Lac-Mégantic, Quebec, is one of the advantages of pipelines.

Failure to act soon on pipeline development will drive away capital investment. As explained by Ross McKittrick, Energy Chair at the Frontier Centre for Public Policy, "time is not on the government's side on this issue," a point echoed by witnesses from the Edmonton Economic Development Corporation and the Edmonton Chamber of Commerce.

PART 2: SOCIAL LICENCE, THE PUBLIC INTEREST AND INVESTOR CONFIDENCE IN REGULATORY PROCESS

A. “SOCIAL LICENCE”: AN INCREASINGLY USED, BUT AMORPHOUS CONCEPT

According to Monica Gattinger, an Associate Professor in the School of Political Studies at the University of Ottawa, the “social licence” concept has its origins in the mining sector as the “social licence to operate,” which has been applied to individual mining companies and their operations respecting specific projects. In the energy sector, however, she explained that “social licence” has been applied in a broader manner to the entire decision-making process.

Indeed, many witnesses criticized the broad, amorphous nature of social licence. For example, these witnesses noted that the term is poorly defined and undemocratic.

As explained by Dave Core, President and Chief Executive Officer of the Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA), “Ultimately, social licence is a political construct and we need to depoliticize pipelines.”

Given the criticisms of social licence, the Committee believes that it is more constructive to focus on the idea of “public interest.” As explained by Gaétan Caron, former National Energy Board (NEB) chair and current Executive Fellow at the University of Calgary’s School of Public Policy, “Public interest presumes that there is a greater good to be achieved by taking some actions, acknowledging that some people will be inconvenienced by such actions or very opposed to them and vocal about their position.”

B. INVESTOR CONFIDENCE IN REGULATORY PROCESSES

As explained by Scott McEachern, a member of the Board of Directors at the Edmonton Chamber of Commerce, “Investors too need to have confidence in the process.” A brief from the Quebec Employers Council further explains that regulatory processes should also be predictable, simple and effective. Witnesses told the Committee that in the current climate, industry and its investors face a great deal of uncertainty and confusion. Investors need to be confident that a pipeline can be built after obtaining the appropriate licences, without the regulatory process changing part way through.

The Committee also heard from government and industry representatives about efforts underway to improve public confidence. For example, NRCan officials discussed the government’s efforts to modernize the NEB and environmental assessment processes.

Regarding industry initiatives, the Committee was impressed with the environmental and safety regimes in place and the efforts implemented to improve public confidence during its site visits to Enbridge’s Edmonton Terminal and the Irving Oil Refinery in Saint John, as well as the

Mulgrave Marine Terminal and the NuStar Terminal in the Strait of Canso area. For example, Irving Oil discussed its partnership with the New England Aquarium, which allowed the company to move its shipping lanes in the Bay of Fundy and eliminate collisions with whales. The Committee was also impressed by the work of Kelcie Miller-Anderson, an entrepreneur who testified about the innovative technology that her company, MycoRemedy, is developing, which would remediate oil sands tailings using fungi-based techniques.

PART 3: A CRUDE OIL TRANSPORT STRATEGY

A. LEADERSHIP

A recurring theme in witness testimony was that the federal government should play a leadership role in making pipeline projects a reality. Indeed, the federal government has jurisdiction over interprovincial and international pipelines and the transportation of dangerous goods for all modes of transport. The Committee believes that implementing the recommendations outlined below will require the federal government to play a leadership role in setting the context and building consensus on why pipeline development is important.

B. SHARING THE BENEFITS OF PIPELINES WITH INDIGENOUS PEOPLES

Ken Coates, Senior Fellow in Aboriginal and Northern Canadian Issues at the Macdonald-Laurier Institute noted that Canada's Indigenous peoples have often not received their fair share of benefits from resource development. Many witnesses spoke about the importance of engaging Indigenous peoples as partners in natural resource development. The Committee believes that engaging Indigenous peoples as partners who share in the benefits of pipeline projects – ideally, as some witnesses pointed out, through equity shares in projects – is critical to the success of a crude oil transport strategy.

It is also important, as noted by some witnesses, not to make generalizations about Indigenous peoples' views on pipelines; although some First Nations are fundamentally opposed to crude oil pipelines crossing their territory, others are willing to form partnerships. As explained by Craig Makinaw, Alberta Regional Chief in the Assembly of First Nations, "First Nations are neither always for nor always against [resource] development." Jennifer Copage, Consultation Coordinator for the Sipekne'katik First Nation also explained that consulting First Nations is not the same as consulting other stakeholders.

Starting to build those partnerships early, well in advance of the regulatory process and the start of construction, is crucial. James Michael, Solicitor for the Sipekne'katik First Nation, made a distinction between consultation and notification, noting that once shovels are in the ground, meaningful consultation cannot occur. As explained by Robert Metcs, Chief Negotiator and Chief Executive Officer of Havlik Metcs Limited, First Nations Limited Partnership, "[E]arly engagement with First Nations on a commercial basis can both reduce project risk and lead to the creation of significant economic value that can be shared equitably amongst all the participants." Adequate time to prepare is an important part of this consultation, as explained by Ontario Regional Chief Isadore Day, from the Chiefs of Ontario.

There are numerous examples of natural resource projects where partnerships with Indigenous peoples have successfully been developed, though many of these examples are from sectors other than pipeline development. According to Mr. Coates from the Macdonald-Laurier Institute,

“There are more than 400 collaboration agreements in the mining sector alone and even more in the forestry sector.”

The Committee also heard other examples from Generating for Seven Generations, the First Nations Limited Partnership and Chemco Electric. Most of these projects attribute some of their success to early engagement with First Nations. Ontario Regional Chief, Isadore Day, also told the Committee that the Chiefs of Ontario plan on developing a set of best practices to give First Nations guidelines for engaging with the NEB.

In the view of the Committee, a lot could be learned from these examples of successful partnerships, which will be crucial in ensuring that Canada’s Indigenous peoples share in the benefits of crude oil transportation. Mr. Caron from the University of Calgary suggested that the key to forming partnerships with Indigenous peoples “is to implement well-known but sometimes poorly implemented best practices.” Therefore,

The Committee recommends that Natural Resources Canada, in collaboration with Indigenous peoples, industry and academia, develop and update annually a working document of best practices in building partnerships with Indigenous communities in the natural resources sector. [Recommendation 1]

Such a document could be used by the NEB, project proponents, Indigenous peoples and other government departments.

National Chief Perry Bellegarde, from the Assembly of First Nations (AFN), suggested that an Indigenous person be included as a member of the NEB. AFN’s Newfoundland and Nova Scotia Regional Chief, Morley Googoo, explained that including Indigenous representation on the Board would give First Nations confidence that the NEB has considered their input. As a sign of partnership with Indigenous peoples, therefore:

The Committee recommends that the Governor in Council use its authority to make appointments under the National Energy Board Act to appoint permanently an Indigenous peoples’ representative to the National Energy Board. The representative should be chosen in consultation with Indigenous communities. [Recommendation 2]

C. MODERNIZATION OF REGULATORY PROCESSES

NEB officials acknowledged that the Board's original legislation dates back to the late 1950s and early 1960s, and welcomed the ongoing NEB modernization review. The Committee believes that modernizing the NEB process to account for concerns about public and investor confidence will be a key part of a national crude oil transport strategy.

Many witnesses suggested that the regulatory process needs to be fair, based upon the best-available evidence, informative and transparent. As noted above, investors also need to be confident that the regulatory process will not change partway through a review, and that they can proceed with a project once they have the required regulatory licences.

Mr. Ross from Borden Ladner Gervais LLP explained that the deferment to the Governor in Council (i.e., Cabinet) for the final decision on pipeline projects could create the impression that the NEB process is politicized.

Witnesses also noted the importance of participation in the NEB process as a factor in ensuring public confidence, suggesting that the process should be open to more individuals and groups. Currently, as explained by NEB officials, participation in the NEB process is limited to anyone who is directly affected by the project application and anyone who has relevant information or expertise to share.

The Committee heard from many witnesses that the NEB is not mandated to deal with the broad policy issues – such as climate change, renewable energy and the participation of Indigenous peoples in natural resource development – that are often raised in its hearings. These witnesses explained that the NEB process focuses on assessing whether or not a specific project is in the public interest, based on various technical aspects of that project, such as its safety and economic viability.

Pipeline companies, as witnesses explained to the Committee, need to spend more time visiting the communities along the route of proposed projects. Witnesses told the Committee that engaging communities and other stakeholders well before the regulatory process will help build local trust for a project. Michel Leblanc, President and Chief Executive Officer of the Board of Trade of Metropolitan Montreal, suggested that pipeline companies may also have to invest in local projects taking place in these communities.

Witnesses also highlighted the importance of the federal government's constitutional duty to consult Indigenous peoples. Some witnesses, such as Alberta Regional Chief Makinaw and Yale Belanger, Professor in the Department of Political Science at the University of Lethbridge, expressed concerns about the disconnect between the NEB process and the federal government's duty to consult. Mr. Caron, a former NEB chair, noted that the NEB, as a regulator independent from government, cannot undertake the Crown's legal duty to consult.

The Committee believes that the NEB should be modernized to take these various concerns into account. Therefore,

The Committee recommends that Natural Resources Canada modernize the National Energy Board (NEB) regulatory process by:

- **removing the Governor in Council's (i.e. Cabinet's) automatic final approval of pipeline projects, thus empowering the NEB to act in Canada's national interests on pipeline decisions. These NEB decisions would be subject to appeal to the Governor in Council, similar to some licensing decisions by the Canadian Radio-television and Telecommunications Commission;**
- **ensuring that Canadians have multiple ways of participating in the NEB process, including, for example, online participation;**
- **broadening the NEB's mandate to include greenhouse gas emissions and other environmental matters that are within the scope of pipeline construction;**
- **broadening the NEB's mandate to ensure effective communication and consultation with stakeholders; and**
- **having the federal government conduct its consultation with First Nations at the same time as the NEB's review of a pipeline project, and feeding the results of that consultation into the NEB process before the Board's final decision on a project. [Recommendation 3]**

The Committee expects that modernizing the NEB will give its officials the means to act in Canada's national interest, above the day-to-day politics of activists and elected officials.

D. PROPOSAL TO EXTEND THE ENERGY EAST PIPELINE

The Committee is also concerned about the lack of participation of stakeholders from Nova Scotia in the NEB's hearings for the proposed Energy East project. During its site visits and hearings in Nova Scotia, the Committee heard concerns that any increased activity on the Bay of Fundy would affect both New Brunswick and Nova Scotia.

The Committee heard a proposal from Michael Priaro from the Association of Professional Engineers and Geoscientists of Alberta, to extend the proposed Energy East pipeline to the Strait

of Canso area in Nova Scotia.¹ The Committee conducted site visits to the Mulgrave Marine Terminal and the NuStar Energy Terminal in the Strait of Canso area, where representatives from both companies outlined the economic, environmental and logistical advantages of the port. In short, these advantages include ensuring that Nova Scotia shares in the benefits of this pipeline, reducing the impact of increased traffic on the environmentally-sensitive Bay of Fundy and providing a shorter route to overseas markets. The Committee is concerned that the NEB has not had an occasion to weigh the costs and benefits of this proposal.

Nova Scotia's Minister of Energy and the Leader of the Official Opposition also support the proposal. A representative from TransCanada acknowledged that there has been some interest among stakeholders in Nova Scotia for the extension. Therefore,

The Committee recommends that the National Energy Board, as part of its hearings on the proposed Energy East project, examine the Strait of Canso area as an alternative end point of the pipeline. [Recommendation 4]

E. FEDERAL-PROVINCIAL COOPERATION

The importance of cooperation between federal and provincial governments was noted by many witnesses. According to Ms. McClenaghan from the Canadian Environmental Law Association, existing federal and provincial environmental assessment regimes already allow for accords or cooperation agreements for regulatory processes.

The Committee believes that better federal/provincial cooperation will result in more timely and efficient regulatory processes.

¹ A copy of the proposal is available as a witness brief on the Committee's website: Mike Priaro, [The Case for the Canso NS Superport as the Energy East Pipeline Terminus](#), 16 April 2015.

F. IMPROVING PUBLIC KNOWLEDGE

Witnesses told the Committee that the federal government can play a role in improving public knowledge about the regulatory process, the importance of the oil and gas sector to the Canadian economy and successful partnerships between Indigenous peoples and natural resource companies. Officials from New Brunswick Energy and Resource Development explained that improving public knowledge would give people a certain level of foundational knowledge to better understand projects and processes. Therefore,

The Committee recommends that Natural Resources Canada focus on improving public knowledge about regulatory processes, the economic importance of the oil and gas sector, and its impact on Indigenous peoples and the environment. [Recommendation 5]

Although the Committee's recommendation focuses on the federal government, witnesses also noted that industry can also play a role in educating the public in this regard.

Vivian Krause, a writer who appeared before the Committee as an individual, suggested that industry and government need to do a better job of refuting false and negative information about the oil and gas industry.

Ms. Krause also raised concerns about the availability of public information about the sources of foreign money used by anti-pipeline activists. The Committee observes that this topic merits further study.

G. RECOMMENDATIONS FROM THE COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

The Committee heard testimony from Julie Gelfand, the Commissioner of the Environment and Sustainable Development in the Office of the Auditor General of Canada about the recommendations for the NEB from her office's Fall 2015 report on the oversight of federally regulated pipelines.² Among other things, the Commissioner's recommendations touched upon tracking compliance with pipeline approval conditions, public access to information about company compliance with those conditions and the recruitment and retention of key NEB staff. The Committee notes that the NEB sent a letter to Commissioner Gelfand stating that they have completed 18 of the 22 recommendations, with the remaining four scheduled for completion by 31 December 2016.³ The Committee believes that implementing the Commissioner's

² Office of the Auditor General of Canada, "[Report 2—Oversight of Federally Regulated Pipelines](#)," *2015 Fall Reports of the Commissioner of the Environment and Sustainable Development*.

³ National Energy Board, [Letter to the Office of the Commissioner of the Environment and Sustainable Development](#).

recommendations will be extremely helpful in improving public confidence, and commends the NEB's work to date.

H. TRANSPORT OF CRUDE OIL BY TANKER

According to Richard Wiefelspuett, Executive Director of the Clear Seas Centre for Responsible Marine Shipping, Canadians know the economic importance of marine shipping, but believe that it must occur in a safe and sustainable manner. Mr. Wiefelspuett, along with witnesses from the Shipping Federation of Canada and the Atlantic Pilotage Authority, voiced concerns with the capacity of the Canadian Coast Guard to enforce regulations and respond to an emergency, both in terms of personnel and equipment.

Heather D. Dettman, a Research Scientist with NRCan, discussed her work comparing the behaviour of conventional and diluted bitumen (dilbit) in test tanks over a period of eight days. Her research shows that at lower temperatures (15°C), the conventional crude oil became trapped in the sediment at the bottom of the tank while dilbit stayed on the surface of the water, where it is easier to recover. However, in tests at higher temperatures (26°C), the dilbit started to disperse into the water and be caught in the sediment.

In the event of an oil spill, authorities must be prepared to reclaim the environment. Canada possesses a world-class marine safety regime, but the Committee believes that more work could be done to push our standard of excellence in terms of both the Canadian Coast Guard's capacity and knowledge about oil spills.

The Committee acknowledges the recently-announced Oceans Protection Plan, which appears to address some of these issues raised by witnesses. Therefore,

The Committee recommends that Fisheries and Oceans Canada ensure that the Oceans Protection Plan includes enhancements to the Canadian Coast Guard, including an expansion of resources and bases of operations for the purposes of oil tanker spill mitigation and prevention. [Recommendation 6]

The Committee recommends that the Government of Canada continue its research into the behaviour of various types of oil in water and how aquatic ecosystems can be better reclaimed after an oil spill, as outlined in the Oceans Protection Plan. [Recommendation 7]

CONCLUSION

In undertaking this study, the Standing Senate Committee on Transport and Communications sought to understand the paralysis preventing the development of new crude oil pipelines in Canada, and to develop a strategy to break that paralysis.

Pipelines have gone undeveloped not for a lack of a regulatory licence, but because of a lack of consensus as to whether or not these pipelines are in the public interest. Nevertheless, some Canadians need assurance that there is a transparent, robust regulatory system in place to oversee pipeline development.

The Committee believes that new pipelines will act as a lifeline to the Canadian economy, which has been hard hit in the oil and gas sector. Pipelines to the east and west coasts will ensure that Canadian oil producers get the full value of this resource on world markets, reduce refineries' dependence on oil imports and improve public safety.

The Committee has made recommendations to Natural Resources Canada, Transport Canada, and Fisheries and Oceans Canada. The Committee believes that these recommendations will help form a strategy to improve public confidence and break the paralysis preventing the construction of pipelines in Canada.

WITNESSES

MycoRemedy	Kelcie Miller-Anderson, Founder	November 16, 2016
As an Individual	Gaétan Caron, Executive Fellow, School of Public Policy, University of Calgary	November 16, 2016
Canadian Association of Energy and Pipeline Landowner Association	Dave Core, President and Chief Executive Officer	November 16, 2016
Friends of Musquash Inc.	David H. Thompson, Acting Chairperson	November 2, 2016
Citizens Coalition for Clean Air	Gordon Dalzell, Chairperson	November 2, 2016
Red Head Anthony's Cove Preservation Association	Lynaya Astephen	November 2, 2016
As an Individual	Paula Tippet	November 2, 2016
As an Individual	Vivian Krause, Writer	November 1, 2016
Chiefs of Ontario	Isadore Day, Ontario Regional Chief	October 25, 2016
Government of Nova, Legislative Assembly of Nova Scotia	The Honourable Jamie Baillie, Member of the Legislative Assembly (Cumberland South) and Leader of the Opposition,	October 21, 2016
Nova Scotia Department of Energy	The Honourable Michel P. Samson, Minister of Energy Kim Himmelman, Director, Regulatory and Strategic Policy	October 21, 2016
Ecology Action Centre	Stephen Thomas, Energy Campaign Coordinator	October 21, 2016
Sipekne'katik	James Michael, Solicitor Jennifer Copage, Consultation Coordinator	October 21, 2016
Assembly of First Nations	Regional Chief Morley Googoo, Newfoundland and Nova Scotia	October 21, 2016
Atlantic Pilotage Authority Canada	Captain Sean Griffiths, Chief Executive Officer	October 21, 2016
Kwilmu'kw Maw-klusuaqn Negotiation Office	Melissa Nevin, Consultation Researcher, Mi'kmaq Rights Initiative Twila Gaudet, Consultation Liaison Officer, Mi'kmaq Rights Initiative	October 21, 2016
Conservation Council of New Brunswick	Lois Corbett, Executive Director Matt Abbott, Marine Program Coordinator	October 19, 2016
Maliseet Grand Council	Ron Tremblay, Grand Chief of Wolastoq Alma Brooks	October 19, 2016
TransCanada	Christian Matossian, Manager, Indigenous Relations, Energy East Patrick Lacroix, Manager, Stakeholder Relations New Brunswick, Energy East	October 19, 2016
Saint John Region Chamber of Commerce	Dick Daigle, Chairman David Duplisea, Chief Executive Officer	October 19, 2016
Government of New Brunswick, Legislative Assembly of New Brunswick	Bruce Fitch, Member of the Legislative Assembly (Riverview), Interim Leader of the Opposition Greg Lutes, Chief of Staff, Office of the Official Opposition	October 19, 2016
New Brunswick Energy and Resource Development	Bill Breckenridge, Assistant Deputy Minister	October 19, 2016
New Brunswick Energy and Resource Development	Holly Stewart, Project Executive Sacha Patino, Senior Advisor	October 19, 2016
Fédération des chambres de commerce du Québec	Stéphane Forget, President and Chief Executive Officer David Laureti, Director, Strategy and Economic Affairs	October 17, 2016
Board of Trade of Metropolitan Montreal	Michel Leblanc, President and Chief Executive Officer Michelle LLambias Meunier, Director, Corporate Affairs and Community Relations	October 17, 2016

Association des propriétaires de machinerie lourde du Québec	Jean-Yves Gauthier, Vice President Yvan Grenier, Director General	October 17, 2016
Shipping Federation of Canada	Sonia Simard, Director, Legislative and Environmental Affairs	October 17, 2016
Quebec Employers Council's	Yves-Thomas Dorval, President and Chief Executive Officer	October 17, 2016
Chemco Ltd.	Todd Halina, Chief Operating Officer	October 4, 2016
Frontier Centre for Public Policy	Ross McKittrick, Energy Chair	September 27, 2016
International Union of Operating Engineers	Patrick Campbell, International Representative	September 22, 2016
District of Kitimat	His Worship Phil Germuth, Mayor	September 22, 2016
Clear Seas Centre for Responsible Marine Shipping	Richard Wiefelspuett, Executive Director	September 22, 2016
First Nations Limited Partnership	Alexandra Ballard, General Manager and Communications and Partnership Development Director, Havlik Metcs Limited Robert Metcs, Chief Negotiator and Chief Executive Officer, Havlik Metcs Limited	September 22, 2016
Government of British Columbia, British Columbia Legislative Assembly	George Heyman, Member of the Legislative Assembly (Vancouver-Fairview)	September 22, 2016
Generating for Seven Generations	Len Wilson, Partner and Managing Director Matt Vickers, Chief Executive Officer Ward Kemerer, Chairman	September 22, 2016
Government of Alberta, Legislative Assembly of Alberta	Bill Bewick, Director of Policy Wildrose Caucus, Legislative Assembly of Alberta Prasad Panda, Member of the Legislative Assembly (Calgary-Foothills)	September 21, 2016
Canadian Energy Research Institute	Allan Fogwill, President and Chief Executive Officer	September 21, 2016
As an Individual	Michael Priaro, Professional Engineer, Association of Professional Engineers and Geoscientists of Alberta	September 21, 2016
Young Pipeliners Association of Canada	Tran Mah-Paulson, President and Chief Executive Officer, Central Executive Committee Kevin Tsang, Board Member (Vice President), Central Executive Committee Peter Tanchak, Board Member (Vice President), Central Executive Committee	September 21, 2016
Alberta Chambers of Commerce	Ken Kobly, President and Chief Executive Officer	September 21, 2016
National Energy Board	Sandy Lapointe, Executive Vice President, Regulatory Shelley Milutinovic, Chief Economist Robert Steedman, Chief Environment Officer Josée Touchette, Chief Operating Officer Peter Watson, Chair and Chief Executive Officer	September 21, 2016
Kinder Morgan Canada Inc.	Peter Forrester, Senior Director, Legal and Aboriginal Affairs	September 21, 2016
Calgary Chamber of Commerce	Justin Smith, Director of Policy, Research and Government Relations	September 21, 2016

Alberta Alaska Rail Development Corporation	John Falcetta, President Ainjil Hunt, Aboriginal Engagement Carol Anne Hilton, Aboriginal Engagement	September 19, 2016
The Usand Group	Blaine Knott, Regional Representative	September 19, 2016
Alberta's Industrial Heartland Association	Pam Cholak, Director of Stakeholder Relations Her Worship Gale Katchur, Vice-Chair and Mayor, City of Fort Saskatchewan Lori Mills, Energy Liaison, Strathcona County	September 19, 2016
Capital Region Board	Malcolm Bruce, Chief Executive Officer Neal Sarnecki, Regional Project Manager	September 19, 2016
City of Red Deer	Her Worship Tara Veer, Mayor	September 19, 2016
Natural Resources Canada	Heather D. Dettman, Research Scientist, CanmetENERGY	September 19, 2016
Alberta Enterprise Group	David MacLean, Vice-President of Communications and Policy	September 19, 2016
Edmonton Chamber of Commerce	James Merkosky, Vice-Chair of the Board of Directors Scott McEachern, Member of the Board of Directors	September 19, 2016
Edmonton Economic Development Corporation	Adam Sweet, Senior Advisor to the President	September 19, 2016
Assembly of First Nations	Perry Bellegarde, National Chief Craig Makinaw, Alberta Regional Chief William David, Senior Policy Analyst, National Chief's Office	June 14, 2016
As an Individual	Monica Gattinger, Associate Professor, School of Political Studies, University of Ottawa	June 14, 2016
Natural Resources Canada	Lisanne Bazinet, Deputy Director, Pipelines Gas and LNG Division, Petroleum Resources Branch Timothy Gardiner, Director General, Strategic Projects Secretariat, Major Projects Management Office Terence Hubbard, Director General, Petroleum Resources Branch	June 7, 2016
Transport Canada	Laureen Kinney, Assistant Deputy Minister, Safety and Security Brigitte Diogo, Director General, Rail Safety Benoit Turcotte, Director, Regulatory Affairs Branch, Transport Dangerous Goods	June 7, 2016
Macdonald-Laurier Institute	Ken Coates, Senior Fellow in Aboriginal and Northern Canadian Issues	June 1, 2016
Safe Rail Communities	Eleni Helen Vassilakos, Co-founder Patricia Yeun Yee Lai, Co-founder	May 18, 2016
Teamsters Canada	Phil Benson, Lobbyist	May 17, 2016
Office of the Auditor General of Canada	Julie Gelfand, Commissioner of the Environment and Sustainable Development Kimberley Leach, Principal	May 17, 2016
As an Individual	Bruce Campbell, Visiting Fellow, Faculty of Law, University of Ottawa	May 11, 2016
Canadian Environmental Law Association	Theresa McClenaghan, Executive Director and Counsel	May 11, 2016
Canadian Association of Petroleum Producers	Alex Ferguson, Vice President, Policy and Performance	May 10, 2016
Railway Association of Canada	Michael Bourque, President and Chief Executive Officer	May 4, 2016
Canadian Pacific Railway	Glen Wilson, Vice-President, Safety, Environment and Regulatory Affairs	May 4, 2016
Canadian Energy Pipeline Association	Chris Bloomer, President and Chief Executive Officer	May 3, 2016
Borden Ladner Gervais LLP	Alan Ross, Partner	April 20, 2016
C.D. Howe Institute	Benjamin Dachis, Associate Director, Research	April 19, 2016
Fraser Institute	Kenneth Green, Senior Director of Natural Resource Studies	April 19, 2016
As Individuals	Geoffrey Hale, Professor, Department of Political	April 13, 2016

	Science, University of Lethbridge Yale Belanger, Professor, Department of Political Science, University of Lethbridge	
As an Individual	Mike Cleland, Senior Fellow, Institute for Science, Society and Policy, University of Ottawa	April 12, 2016
Macdonald-Laurier Institute	Sean Speer, Senior Fellow	April 12, 2016

Note: Briefs submitted to the committee can be found at www.senate-senat.ca/trcm.asp